

Exhibit 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

Jonathan R., minor, by Next :
Friend, Sarah Dixon, et al., :
:
Plaintiffs, : Class Action
:
v. : 3:19-cv-00710
:
Jim Justice, in his official :
capacity as the Governor of :
West Virginia, et al., :
:
Defendants. :

VIDEOCONFERENCE DEPOSITION OF ELSA POPCHAK

DATE: October 16, 2020
TIME: 8:53 a.m. to 11:50 a.m.
LOCATION: Witness Location

REPORTED BY: Felicia A. Newland, CSR

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Washington, D.C. 20005

<p style="text-align: right;">Page 34</p> <p>1 patterns with respect to the nine named plaintiffs. 2 Is that correct? 3 MS. MAHONEY: Objection. 4 THE WITNESS: Yes. That is what we 5 were asked to look at, was the nine cases. 6 BY MR. PEISCH: 7 Q You didn't find any patterns that 8 applied to -- across the foster care program to all 9 7,000 children, did you? 10 MS. MAHONEY: Objection. 11 THE WITNESS: We were only asked to 12 look at these specific cases. 13 BY MR. PEISCH: 14 Q Okay. You mentioned this earlier, 15 but can you describe the process for how the 16 executive summary was written? 17 A In reading the -- in reading each of 18 the cases, each of us started to outline or make 19 notes of things that we saw that we noticed in our 20 cases as we were reading the documents and writing 21 our reports. 22 From there, we would have</p>	<p style="text-align: right;">Page 36</p> <p>1 MS. MAHONEY: And I'm going to 2 instruct the witness to not disclose any 3 conversations that happened with counsel -- 4 THE WITNESS: Okay -- 5 MS. MAHONEY: -- in relation to 6 regarding drafts. 7 BY MR. PEISCH: 8 Q Did you take the lead in drafting the 9 permanency section of the executive summary? 10 A Yes. 11 Q And did the permanency section 12 reflect a summary of the totality of you and your 13 colleagues' views on permanency issues that you 14 identified in the nine named cases? 15 A In the nine cases, correct. 16 Q All right. I would like to turn your 17 attention to a sentence on page 5. So could you 18 turn to page 5? 19 A Yes. 20 Q Okay. So on page 5 -- and this is 21 not in the -- this is not in the permanency 22 section, so I'm going back to -- I apologize for</p>
<p style="text-align: right;">Page 35</p> <p>1 conversations with each other, meaning Ms. Flory, 2 Ms. Getman, and myself. We would have 3 conversations and we would say, "Oh, yeah, and such 4 and such, I saw this happening. And in this one, I 5 saw this happening." And from there, we developed 6 a chart that started listing out each of the themes 7 that we saw. And they were very prevalent types of 8 things that were, in my professional opinion, 9 fairly basic types of things as well. 10 Q And did one person take the lead in 11 drafting the whole executive summary or did you 12 each do sections? 13 A Each of us took shots at sections, 14 and then we kind of collaborated and sent things 15 back and forth with each other. 16 Q Did plaintiffs' counsel make any 17 edits to the executive summary? 18 MS. MAHONEY: Objection. 19 THE WITNESS: I would say mostly from 20 my end, or my point of view, grammatical and 21 technical kinds of things. But grammatical, the 22 cleaning up and making sure it looked pretty.</p>	<p style="text-align: right;">Page 37</p> <p>1 jumping around a little bit here. 2 So under Subheading A, the second 3 sentence of that paragraph reads -- or I'm going to 4 read two sentences, "This total lack of critical 5 thinking and analysis is especially evident in the 6 cases of the Serena S. and Theo S. For them, 7 DHHR's gravely in-completed investigation and 8 family functioning assessments were further 9 compromised by confirmation bias of DHHR workers 10 and supervisors, which materialized through their 11 inaction as they adopted an unchallenged set of 12 beliefs that formed at the onset of services." 13 Do you see that -- 14 A Yes. 15 Q -- those two sentences? 16 A Yes. 17 Q Okay. You did not write those 18 sentences, correct? 19 A No, I did not. 20 Q And given that you didn't review the 21 case files of Serena S. and Theo S., you don't 22 personally know whether those statements are true,</p>

<p style="text-align: right;">Page 38</p> <p>1 correct?</p> <p>2 A Those -- in working with Ms. Getman</p> <p>3 and Ms. Flory, I trust their judgment on what it</p> <p>4 was that they presented in each of their cases, so</p> <p>5 I am going with the -- my belief and assumption</p> <p>6 that those are true and accurate statements.</p> <p>7 Q So you have faith in your colleagues,</p> <p>8 but you don't personally know those statements to</p> <p>9 be true?</p> <p>10 MS. MAHONEY: Objection. Asked and</p> <p>11 answered.</p> <p>12 You can answer.</p> <p>13 THE WITNESS: Oh, I'm sorry. I</p> <p>14 didn't know.</p> <p>15 BY MR. PEISCH:</p> <p>16 Q It's very common, yeah.</p> <p>17 A I'm sorry. I -- I believe that these</p> <p>18 are true statements.</p> <p>19 Q And what's your basis for believing</p> <p>20 they're true statements?</p> <p>21 A Because I trust in the professional</p> <p>22 credibility of my colleagues.</p>	<p style="text-align: right;">Page 40</p> <p>1 answered.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. PEISCH:</p> <p>4 Q Okay. At any point did you interview</p> <p>5 anyone at DHHR?</p> <p>6 MS. MAHONEY: Objection. Asked and</p> <p>7 answered.</p> <p>8 THE WITNESS: No, I did not.</p> <p>9 BY MR. PEISCH:</p> <p>10 Q Do you know if the three children</p> <p>11 that you reviewed, do you know if they were</p> <p>12 randomly selected?</p> <p>13 A I do not know how they were selected.</p> <p>14 Q We talked earlier about how you</p> <p>15 reviewed the case files. In that review process,</p> <p>16 did you use any standard tool or form to analyze</p> <p>17 the cases?</p> <p>18 MS. MAHONEY: Objection. Vague.</p> <p>19 Confusing.</p> <p>20 THE WITNESS: Yeah, I don't know what</p> <p>21 you mean.</p> <p>22</p>
<p style="text-align: right;">Page 39</p> <p>1 Q And they told you those were true</p> <p>2 statements?</p> <p>3 A Correct.</p> <p>4 Q And would you agree there's dozens of</p> <p>5 statements in this executive summary that are based</p> <p>6 on things that your colleagues told you about their</p> <p>7 case reviews, not your personal review of those</p> <p>8 case reviews?</p> <p>9 A I was only hired to review three</p> <p>10 cases. So in writing the executive summary, of</p> <p>11 course I had to utilize their judgment and their</p> <p>12 credibility and their statements and believe those</p> <p>13 as being the truth.</p> <p>14 Q Okay. I would like to turn back to</p> <p>15 your -- what you just talked about, your three</p> <p>16 kids.</p> <p>17 Okay. So in analyzing the cases of</p> <p>18 Ace, Gretchen, and Jonathan, did you interview</p> <p>19 anyone?</p> <p>20 A No.</p> <p>21 Q You didn't interview the children?</p> <p>22 MS. MAHONEY: Objection. Asked and</p>	<p style="text-align: right;">Page 41</p> <p>1 BY MR. PEISCH:</p> <p>2 Q Do you know what a standardized</p> <p>3 review tool is?</p> <p>4 Does that term mean anything to you?</p> <p>5 A Are you referring to like one of the</p> <p>6 tools used in the CFSRs or --</p> <p>7 Q Yes. That would be an example, yes.</p> <p>8 A No, I did not use that type of a</p> <p>9 tool.</p> <p>10 Q So you actually answered my next</p> <p>11 question. Are you familiar with ACF's CFSRs?</p> <p>12 A The whole country does them so --</p> <p>13 Q Okay. Can you describe what ACF's</p> <p>14 CFSR is, as you understand it?</p> <p>15 MS. MAHONEY: Objection. Relevance.</p> <p>16 THE WITNESS: They are to look -- I'm</p> <p>17 sorry.</p> <p>18 MS. MAHONEY: Go ahead.</p> <p>19 THE WITNESS: I'm sorry.</p> <p>20 They are to look at the basic</p> <p>21 reasonable professional standards being met by</p> <p>22 each jurisdiction throughout the country. They</p>

<p style="text-align: right;">Page 42</p> <p>1 lay out benchmarks as outlined by the federal</p> <p>2 government and every jurisdiction in child</p> <p>3 welfare has to adhere to those standards.</p> <p>4 BY MR. PEISCH:</p> <p>5 Q And is it your understanding that the</p> <p>6 ACF in the CFSR uses a standardized tool to do</p> <p>7 those assessments?</p> <p>8 A Yes, they do.</p> <p>9 Q Do you know if ACF reviews individual</p> <p>10 cases when it does the CFSR?</p> <p>11 A They do a random selection.</p> <p>12 Q Do you know if ACF interviews people</p> <p>13 when they do the CFSR?</p> <p>14 MS. MAHONEY: Objection.</p> <p>15 THE WITNESS: I do not know</p> <p>16 specifically of interviewing people outside of a</p> <p>17 worker involved if there were questions about</p> <p>18 something that was done.</p> <p>19 BY MR. PEISCH:</p> <p>20 Q Okay. So I understand that you had a</p> <p>21 specific assignment here that, you know, was -- you</p> <p>22 had a specific assignment here, but if it was up to</p>	<p style="text-align: right;">Page 44</p> <p>1 not interview other people, we simply looked at the</p> <p>2 totality of the case.</p> <p>3 BY MR. PEISCH:</p> <p>4 Q So in Cuyahoga County, when you</p> <p>5 reviewed the performance in a specific case, you</p> <p>6 never talked to a caseworker?</p> <p>7 A In our CQI unit, our quality control</p> <p>8 unit, they only looked at the case.</p> <p>9 Q And when they were doing that</p> <p>10 analysis, were they reviewing overall performance</p> <p>11 in the case or were they reviewing compliance with</p> <p>12 specific -- you know, a specific regulation or a</p> <p>13 specific policy?</p> <p>14 A I believe that those two go hand in</p> <p>15 hand.</p> <p>16 Q Do you believe it would have been</p> <p>17 useful -- do you believe it's useful in analyzing</p> <p>18 the performance of a case to interview people</p> <p>19 involved in that case?</p> <p>20 MS. MAHONEY: Objection. Vague.</p> <p>21 Confusing.</p> <p>22 THE WITNESS: What do you mean by</p>
<p style="text-align: right;">Page 43</p> <p>1 you and you were reviewing performance in the West</p> <p>2 Virginia child welfare system, would you have used</p> <p>3 a random sample?</p> <p>4 MS. MAHONEY: Objection.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. PEISCH:</p> <p>7 Q And, similarly, if you were reviewing</p> <p>8 performance in cases and it was up to you, would</p> <p>9 you use a standardized tool similar to the tool</p> <p>10 used in the CFSR?</p> <p>11 MS. MAHONEY: Objection.</p> <p>12 THE WITNESS: I don't know that I</p> <p>13 believe that to be necessary all the time.</p> <p>14 BY MR. PEISCH:</p> <p>15 Q Okay. And, similarly, again, if it</p> <p>16 was up to you and you were reviewing performance on</p> <p>17 cases, would you have interviewed people involved</p> <p>18 in those cases?</p> <p>19 MS. MAHONEY: Objection.</p> <p>20 THE WITNESS: Within our -- within</p> <p>21 Cuyahoga County, when we reviewed cases, we did not</p> <p>22 review -- we did not speak to other people, we did</p>	<p style="text-align: right;">Page 45</p> <p>1 "people involved in the case"?</p> <p>2 BY MR. PEISCH:</p> <p>3 Q A caseworker, child, foster parents,</p> <p>4 biological parents, anyone.</p> <p>5 MS. MAHONEY: Objection.</p> <p>6 THE WITNESS: I would say no, I don't</p> <p>7 believe that's always useful.</p> <p>8 BY MR. PEISCH:</p> <p>9 Q Okay. Do you believe it's ever</p> <p>10 useful?</p> <p>11 A I don't know.</p> <p>12 Q So just to make sure I've got this</p> <p>13 right, so the -- in reviewing -- in determining</p> <p>14 how -- in determining the performance in an</p> <p>15 individual case, you do not think it's useful to</p> <p>16 talk to the caseworker, correct?</p> <p>17 MS. MAHONEY: Objection.</p> <p>18 Mischaracterizes the testimony.</p> <p>19 THE WITNESS: There are some times</p> <p>20 when you might need to do that, but if it's not</p> <p>21 written down in that case in a way that somebody</p> <p>22 can tell what happened, it didn't happen.</p>

<p style="text-align: right;">Page 46</p> <p>1 BY MR. PEISCH:</p> <p>2 Q Is that the assumption you made in</p> <p>3 reviewing these cases?</p> <p>4 A Yes.</p> <p>5 Q Other than in Cuyahoga County, are</p> <p>6 you aware of any person or entity, such as the</p> <p>7 federal government or a state or a jurisdiction,</p> <p>8 that does case file reviews without interviewing</p> <p>9 people?</p> <p>10 MS. MAHONEY: Objection.</p> <p>11 THE WITNESS: I'm not aware of that.</p> <p>12 I don't know what other entities do.</p> <p>13 BY MR. PEISCH:</p> <p>14 Q And outside of Cuyahoga County, are</p> <p>15 you aware of any person or entity that analyzes</p> <p>16 case file performance without a standardized tool?</p> <p>17 A I don't specifically know of what</p> <p>18 practices other jurisdictions use.</p> <p>19 Q And in Cuyahoga County that -- what</p> <p>20 was it, QI -- I'm sorry, what was the QI? Did they</p> <p>21 use a standardized tool in evaluating performance?</p> <p>22 MS. MAHONEY: Objection. What is</p>	<p style="text-align: right;">Page 48</p> <p>1 Q Why did Gretchen come into the</p> <p>2 custody of DHHR?</p> <p>3 A Gretchen came into the custody of</p> <p>4 DHHR on some of her unruly behaviors or delinquent</p> <p>5 behaviors following years of neglect and potential</p> <p>6 emotional abuse in her home.</p> <p>7 Q Was she adjudicated abused and</p> <p>8 neglected?</p> <p>9 A I believe that she was adjudicated as</p> <p>10 delinquent.</p> <p>11 Q So she came into DHHR custody because</p> <p>12 she was adjudicated delinquent, correct?</p> <p>13 A Yes.</p> <p>14 Q Did you analyze whether the three</p> <p>15 named plaintiffs that you reviewed were typical of</p> <p>16 the West Virginia population as a whole -- West</p> <p>17 Virginia foster population as a whole?</p> <p>18 A I only looked at the cases that I was</p> <p>19 looking at, so I don't know anything about the</p> <p>20 whole system.</p> <p>21 Q Okay. You mentioned earlier where</p> <p>22 you applied reasonable professional standards. And</p>
<p style="text-align: right;">Page 47</p> <p>1 the -- what is QI? Can you clarify?</p> <p>2 THE WITNESS: The CQI unit was our</p> <p>3 quality control unit, and they sometimes simply</p> <p>4 read a case and took notes on that case and looked</p> <p>5 at the facts of the case and what was documented or</p> <p>6 not documented. And at other times, they did use</p> <p>7 tools similar to the CFSR tools.</p> <p>8 BY MR. PEISCH:</p> <p>9 Q Did your -- did the Cuyahoga County</p> <p>10 quality -- CQI, sorry, did -- when they were</p> <p>11 reviewing cases, did they randomly select the</p> <p>12 cases?</p> <p>13 A Sometimes.</p> <p>14 Q Okay. Let's see. Sorry. I think I</p> <p>15 told you I was going to ask questions about Ace,</p> <p>16 Gretchen, and Jonathan, and I got sidetracked so</p> <p>17 let me go back to that.</p> <p>18 Would you agree that Ace, Jonathan,</p> <p>19 and Gretchen, when they came into DHHR custody,</p> <p>20 were complex cases?</p> <p>21 A They were pretty normal child welfare</p> <p>22 cases, in my opinion.</p>	<p style="text-align: right;">Page 49</p> <p>1 we see that in your report. How did you develop --</p> <p>2 where did those reasonable professional standards</p> <p>3 come from?</p> <p>4 A Reasonable professional standards</p> <p>5 are, you know, basically those things that are</p> <p>6 recognized in our profession. They are things that</p> <p>7 are set out as kind of a national standard, you</p> <p>8 know, when you were talking about the CFSRs and</p> <p>9 things like that. You know, so they are based off</p> <p>10 of federal rules, federal law, recognized child</p> <p>11 welfare expert type of things. I also utilized,</p> <p>12 you know, some of my own training and background</p> <p>13 and knowledge of child welfare.</p> <p>14 Q Are all of the reasonable</p> <p>15 professional standards written down somewhere?</p> <p>16 A I don't know that I would say that</p> <p>17 they're written down, per se, as saying these are</p> <p>18 reasonable professional standards. I mean, there's</p> <p>19 benchmarks that we look at in child welfare.</p> <p>20 Q Okay. Did you and your co-authors</p> <p>21 discuss what the reasonable professional standards</p> <p>22 would be that you're applying?</p>

<p style="text-align: right;">Page 50</p> <p>1 A I think when we went through our</p> <p>2 cases and in our discussions and we looked at</p> <p>3 things such as, you know, supervisory conferences</p> <p>4 with workers and documentation of such,</p> <p>5 documentations of thorough, complete</p> <p>6 investigations, you know, documentations of what</p> <p>7 took place and happened on home visits, service</p> <p>8 provision. Those are kinds of the reasonable</p> <p>9 professional standards that we talked about and</p> <p>10 that we looked at.</p> <p>11 Q Did you and your co-authors agree to</p> <p>12 a set of reasonable professional standards that you</p> <p>13 used as a benchmark for this report?</p> <p>14 A When we would talk, we would kind of</p> <p>15 start making notes on each of the things that we</p> <p>16 saw as patterns within each of our cases and then</p> <p>17 created a little spreadsheet, kind of, chart that</p> <p>18 said, you know, "Hey, we all saw this in our case</p> <p>19 and is this something that you guys saw in your</p> <p>20 case."</p> <p>21 Q Okay. Did you -- but did you</p> <p>22 actually write down, like, the reasonable</p>	<p style="text-align: right;">Page 52</p> <p>1 Q Do you know if any of the casework --</p> <p>2 well, strike that.</p> <p>3 Okay. Can I turn your attention back</p> <p>4 to the actual document to page 2? And I want to</p> <p>5 ask you about another sentence.</p> <p>6 A Okay.</p> <p>7 Q The sentence just above subparagraph</p> <p>8 3, there's a sentence that reads, "Well, some</p> <p>9 themes are evident in 100 percent of the reviewed</p> <p>10 case. The reviewers determined that each remaining</p> <p>11 theme amounts to a major shortfall evident as a</p> <p>12 pattern in 44 percent to 89 percent of the reviewed</p> <p>13 cases."</p> <p>14 Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Okay. This report does not indicate</p> <p>17 which themes map to which percentages referenced in</p> <p>18 that sentence, does it?</p> <p>19 A No. No, it does not.</p> <p>20 Q And which theme or themes apply to</p> <p>21 only 44 percent of the named plaintiffs' cases?</p> <p>22 A I would have to go back and look at</p>
<p style="text-align: right;">Page 51</p> <p>1 professional standards that you were applying?</p> <p>2 A They are basically the things that we</p> <p>3 wrote down in the executive summary.</p> <p>4 Q Okay. So is it fair to say that all</p> <p>5 of the reasonable professional standards are in the</p> <p>6 executive summary?</p> <p>7 A The standards that we saw that were</p> <p>8 of concern to us creating our -- in completing our</p> <p>9 analysis, those are what we cited.</p> <p>10 Q Right. They were reasonable</p> <p>11 professional standards that might not have been</p> <p>12 involved in these cases, you didn't write those</p> <p>13 down in the executive summary, right?</p> <p>14 A Correct.</p> <p>15 Q Okay. In discussing and developing</p> <p>16 these reasonable professional standards, did you</p> <p>17 look at West Virginia state law at all?</p> <p>18 A I did not, no.</p> <p>19 Q And did you look at the -- any</p> <p>20 standards from the West Virginia Board of Social</p> <p>21 Work?</p> <p>22 A No, I did not.</p>	<p style="text-align: right;">Page 53</p> <p>1 notes. I don't know that information.</p> <p>2 Q Okay. Were there themes that applied</p> <p>3 to, you know, 50 or 75 percent of the cases, but</p> <p>4 not all of them?</p> <p>5 MS. MAHONEY: Objection. Confusing.</p> <p>6 BY MR. PEISCH:</p> <p>7 Q What I'm trying to understand -- let</p> <p>8 me back up. I understand why that might be</p> <p>9 confusing.</p> <p>10 So, you know, 44 to 89 percent, from</p> <p>11 my perspective, is kind of a broad range. And I'm</p> <p>12 trying to figure out, like, were there themes that</p> <p>13 applied. So it sounds like the statement says</p> <p>14 there were themes that applied to 44 percent and</p> <p>15 themes that applied to 89 and themes that applied</p> <p>16 to 100 percent. Are those the only three</p> <p>17 percentages or were there some themes that applied</p> <p>18 to something between 44 and 89 percent?</p> <p>19 A I would have to look back at the</p> <p>20 charts that we created or -- we looked at each of</p> <p>21 our cases and, you know, lined up the themes and</p> <p>22 then had our kids and said, "Hey, was this</p>

<p style="text-align: right;">Page 54</p> <p>1 something that you saw in yours?"</p> <p>2 So there were themes that we talked</p> <p>3 about. Some of them applied to all of our cases.</p> <p>4 And when I say "all of our cases," some of them</p> <p>5 applied to all three of my cases --</p> <p>6 Q Right.</p> <p>7 A -- some of them applied to two of my</p> <p>8 cases, some of them applied to one of my cases.</p> <p>9 You know, it varied. And it varied for each of us.</p> <p>10 Q Why didn't you put that chart showing</p> <p>11 which kids and which theme in the report?</p> <p>12 A It was kind of our scrap kind of</p> <p>13 thinking chart. I don't know.</p> <p>14 Q And when we're talking about -- I</p> <p>15 guess I should have asked this earlier. When we're</p> <p>16 talking about the themes that you identified, are</p> <p>17 those the headings on pages 5 to 32 of the -- of</p> <p>18 the executive summary? Is what the themes are?</p> <p>19 A Yes, I believe so.</p> <p>20 Q Okay. So, for example, if we just --</p> <p>21 if we go to page 5, where we previously were, one</p> <p>22 theme would be: "The reviewed case records reflect</p>	<p style="text-align: right;">Page 56</p> <p>1 executive summary -- actually, I'm sorry, let's</p> <p>2 just stay on page 5.</p> <p>3 A Okay.</p> <p>4 Q This page 5 is the section where it</p> <p>5 starts, "Investigations and Pre-placement</p> <p>6 Services." It appears that you and your colleagues</p> <p>7 found a lot of issues relating to investigations</p> <p>8 and pre-placement services. Would you agree with</p> <p>9 that?</p> <p>10 A There were a lot of issues that were</p> <p>11 found in those areas, yes.</p> <p>12 Q In your opinion, is the</p> <p>13 investigations and pre-placement services area the</p> <p>14 area where DHHR made mistakes that caused the most</p> <p>15 harm to children, the children in the cases that</p> <p>16 you reviewed?</p> <p>17 MS. MAHONEY: Objection.</p> <p>18 THE WITNESS: I think it's where a</p> <p>19 lot of the harm started and then continued on and</p> <p>20 snowballed from there.</p> <p>21 BY MR. PEISCH:</p> <p>22 Q Can I turn your attention to page 17?</p>
<p style="text-align: right;">Page 55</p> <p>1 a lack of critical thinking throughout the</p> <p>2 investigative and assessment process." Is that</p> <p>3 right, that would be one theme?</p> <p>4 A Yes.</p> <p>5 Q And do you know what percentage of</p> <p>6 the nine kids that one theme applied to?</p> <p>7 A I don't have my notes in front of me</p> <p>8 no.</p> <p>9 Q Do you believe that West Virginia</p> <p>10 caseworkers lacked critical thinking?</p> <p>11 Let me rephrase that. Do you believe</p> <p>12 that in the three cases that you reviewed, the</p> <p>13 caseworkers lacked critical thinking?</p> <p>14 A In the three cases that I reviewed,</p> <p>15 yes, there was a lack of critical thinking.</p> <p>16 Q And you feel you can make that</p> <p>17 judgment even without talking to the caseworkers?</p> <p>18 A Based on what I read and what I</p> <p>19 reviewed, I believe there was a lack of critical</p> <p>20 thinking.</p> <p>21 Q Okay. Okay. Can I turn your</p> <p>22 attention to page 30 of -- still staying in the</p>	<p style="text-align: right;">Page 57</p> <p>1 A Am I really turning this time?</p> <p>2 Q Oh, yeah. Yes, actually.</p> <p>3 A All right. I don't mean to be a</p> <p>4 smart aleck.</p> <p>5 Q That's fine. I earned it. And I</p> <p>6 will probably have five or ten more questions and</p> <p>7 then maybe we can take a break.</p> <p>8 A Okay.</p> <p>9 Q So on page 17, at the top of page 17,</p> <p>10 there's a sentence that reads, "However, DHHR</p> <p>11 appears ill-equipped to achieve permanency in a</p> <p>12 timely manner for children in its custody."</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q And did you write that sentence?</p> <p>16 A Yes.</p> <p>17 Q That sentence is -- you know, uses</p> <p>18 the word "appears." Is that because the sentence</p> <p>19 means that it appears DHHR is ill-equipped based on</p> <p>20 your review of the three named plaintiffs' case</p> <p>21 files?</p> <p>22 A It was based on the review of all</p>

<p style="text-align: right;">Page 62</p> <p>1 some of the things that we talked about were</p> <p>2 dealing with the types of training, the types of</p> <p>3 supervisory guidance, the types of, you know, what</p> <p>4 policies are there, specifically and how clear are</p> <p>5 those policies and how are they're reflected, what</p> <p>6 are the caseloads, what are the</p> <p>7 worker-to-supervisor ratios, what are the overall</p> <p>8 numbers that workers are dealing with.</p> <p>9 Q And what do you mean by these causes</p> <p>10 are beyond the scope of this summary and review?</p> <p>11 A We were not -- we were hired to look</p> <p>12 at these nine cases, and from these cases that we</p> <p>13 looked at, we were able to kind of extrapolate an</p> <p>14 overall picture of what we believe is happening</p> <p>15 within the system. It is a small sample. We were</p> <p>16 not there to make an overall judgment of all of</p> <p>17 West Virginia's child welfare system.</p> <p>18 Q Okay. All right. Now might be a</p> <p>19 good time for a break. It's been a little bit over</p> <p>20 an hour.</p> <p>21 A Not quite.</p> <p>22 Q Do you want to take maybe a</p>	<p style="text-align: right;">Page 64</p> <p>1 plaintiffs gave you some areas that you would want</p> <p>2 to know more about and follow up on. Is that</p> <p>3 right?</p> <p>4 A With the nine named plaintiffs --</p> <p>5 man, I don't know what the heck is wrong with my</p> <p>6 speaking.</p> <p>7 With the nine named plaintiffs, we</p> <p>8 were able to say, this is what we saw in these</p> <p>9 cases. And from there, based on -- that we saw</p> <p>10 these things in all nine of these cases or in the</p> <p>11 majority of the cases, we would then be able to</p> <p>12 say, this is probably a bigger issue or a problem.</p> <p>13 Q So that's what I really want to drill</p> <p>14 down on that. I'm not sure I'm understanding. Are</p> <p>15 you making conclusions about the entire West</p> <p>16 Virginia foster care system based on these nine</p> <p>17 named plaintiffs?</p> <p>18 MS. MAHONEY: Objection. Counsel,</p> <p>19 the witness has testified that she was hired to</p> <p>20 review the nine cases, and I just want to make note</p> <p>21 that she was hired at the class certification</p> <p>22 stage.</p>
<p style="text-align: right;">Page 63</p> <p>1 ten-minute break and we'll reconvene at 10:10?</p> <p>2 (Recess from 10:00 a.m. to 10:10 a.m.)</p> <p>3 BY MR. PEISCH:</p> <p>4 Q I just want to ask you a couple of</p> <p>5 follow-up questions. Your conclusions in this</p> <p>6 report are based only on the review of the nine</p> <p>7 named plaintiffs, correct?</p> <p>8 A They are based on the cases that</p> <p>9 were -- they are based on the cases that we</p> <p>10 reviewed; however, the themes that we talk about</p> <p>11 are things that I believe can apply to more than</p> <p>12 just these nine cases.</p> <p>13 Q Did you conclude that the themes that</p> <p>14 you talk about do apply in the West Virginia foster</p> <p>15 care system be on the nine named plaintiffs?</p> <p>16 A Do I know factually that they apply?</p> <p>17 No. Do I believe that it is something that needs</p> <p>18 further investigation and looking at, yes.</p> <p>19 Q Okay. So you used the word</p> <p>20 "extrapolate" before. You didn't extrapolate</p> <p>21 actual conclusions from the nine named plaintiffs</p> <p>22 on the system, but reviewing the nine named</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MR. PEISCH:</p> <p>2 Q So I will repeat the question. Are</p> <p>3 you making conclusions -- in this expert report,</p> <p>4 are you making conclusions about the entire West</p> <p>5 Virginia foster care system or just the nine named</p> <p>6 cases?</p> <p>7 A We make some specific conclusions on</p> <p>8 the nine named cases that could be indicative of</p> <p>9 the overall system.</p> <p>10 Q But just could be indicative, not</p> <p>11 definitively -- you're not definitively concluding</p> <p>12 that they do exist?</p> <p>13 MS. MAHONEY: Objection. Asked and</p> <p>14 answered.</p> <p>15 THE WITNESS: I don't know based upon</p> <p>16 my limited review that they -- that these, in fact,</p> <p>17 do exist.</p> <p>18 BY MR. PEISCH:</p> <p>19 Q So I would like to switch gears to</p> <p>20 something that -- well, it seemed that in your</p> <p>21 report that there was some frustration with the</p> <p>22 case file organization, I guess would be. Is that</p>